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Mr. Gary Walsh
Executive Director
South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLATA
Services Pursuant to Section 271 of the Telecommunications Act of 1996
Our File No.: 255.169

Dear Mr. Walsh:

Attached for filing with the Commission is an original and seven (7) copies of AT&T's Response to BellSouth's Request for a Hearing on July 23, 2001, filed on behalf of AT&T Communications of The Southern States, Inc. in the above-referenced matter. All parties of record are being served as indicated in the attached Certificate of Service.

If you have any questions or concerns regarding this filing, please do not hesitate to call.

Best regards,

Francis P. Mood

FPM:gpc

cc: All parties of record

CERTIFICATE OF SERVICE

The undersigned attorney of Haynsworth Sinkler Boyd, P.A., hereby certifies that he has served the following parties with a copy of a **AT&T's Response to BellSouth's Request for a Hearing on July 23, 2001** (In RE: Application of Bellsouth Telecommunications, Inc. to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996) by causing a copy of same to be mailed in the United States Postal Service, first-class postage prepaid, addressed to the persons and attorneys listed below on **MAY 21, 2001**.

ADDRESSEES

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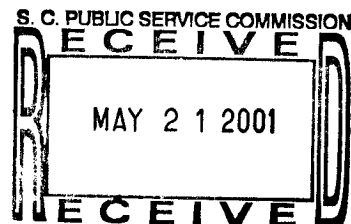
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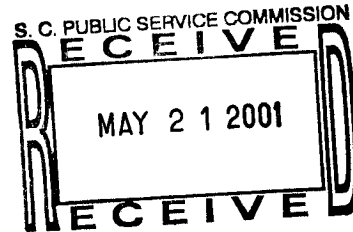
Francis P. Mood



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. _____

IN RE:)
Application of BellSouth)
Telecommunications, Inc. to Provide)
In-Region InterLATA Services Pursuant)
to Section 271 of the Telecommunications)
Act of 1996)
)



AT&T'S RESPONSE TO BELL SOUTH'S
REQUEST FOR A HEARING ON JULY 23, 2001

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AT&T COMMUNICATIONS OF
THE SOUTHERN STATES, INC.

AT&T Communications of the Southern States, Inc. (“AT&T”) files its response to BellSouth Telecommunications, Inc.’s (“BellSouth”) May 18, 2001, request for a July 23, 2001 hearing date regarding its application to provide in-region interLATA services pursuant to Section 271 of the Telecommunications Act of 1996 (the “Act”). This is not the first time BellSouth has sought the South Carolina Public Service Commission’s (“Commission”) expeditious review of its 271 application. In 1997, using much of the same rhetoric that it has used in this most recent filing, BellSouth sought and obtained this Commission’s 271 endorsement in an expedited process much like that which BellSouth is seeking here. BellSouth’s application however, was rejected by the U.S. Department of Justice and the Federal Communications Commission.¹

Once again, BellSouth has come to this Commission seeking 271 approval on an expedited basis. The Commission’s review of BellSouth’s Section 271 compliance at this time, however, is premature and the expedited review BellSouth seeks is inappropriate. First, because the Commission to date has not ordered third party testing of BellSouth’s operational support systems (“OSS”), it is unclear how BellSouth intends to establish OSS checklist compliance in South Carolina. Specifically, in Georgia, BellSouth stated in the Georgia OSS checklist compliance docket that “...tests of BellSouth’s OSS in other states [are] not relevant to any issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.”²

¹ Memorandum Opinion and Order, *Application of BellSouth Corp. Pursuant to Section 271 of the Telecommunications Act of 1934, as amended, to provide In-Region, InterLATA Services to South Carolina*, CC Docket No. 97-208 (Dec. 24, 1997).

² See, In re: Investigation Into Development of Electronic Interfaces for BellSouth’s Operations Support Systems, Docket No. 8354-U. This statement was made by BellSouth in the context of discovery ongoing regarding third party testing of BellSouth’s OSS in Georgia. In discovery, specifically AT&T’s first Interrogatory No. 15, AT&T asked BellSouth the following question: “Please identify all states in which BellSouth operational support system has been or is being tested and describe all testing, monitoring and reporting differences between the Georgia OSS Test and the review or testing of BellSouth’s OSS in other states.” BellSouth’s answered Interrogatory 15 as follows: “BellSouth objects to this interrogatory on grounds that the information concerning tests of BellSouth’s

Thus, given BellSouth's own admission in Georgia, it is unclear at this time how BellSouth intends to prove OSS checklist compliance in this state.

Moreover, to the extent BellSouth subsequently attempts to modify or otherwise retract its position in Georgia to allow testing in other states to be considered in Georgia and South Carolina, this Commission should look to OSS testing that is occurring in all states—and not just limited test results from any one state. As this Commission is aware, third party testing is currently underway in both Georgia and Florida. However, neither of those tests is complete. The Florida third party test is significantly more robust and thorough than the Georgia test. Second, and equally as important as OSS checklist compliance, BellSouth's proposed hearing date is premature because this Commission has not considered certain other critical issues related to Section 271 compliance including, but not limited to, performance measures, nondiscriminatory access to digital subscriber lines ("DSL"), the terms and conditions upon which BellSouth will allow competitive local exchange carriers ("CLECs") to interconnect with BellSouth's network. Absent resolution of all of these critical issues, a 271 review in South Carolina is premature on all fronts.

I. TO DETERMINE SECTION 271 CHECKLIST COMPLIANCE, THE COMMISSION MUST CONSIDER THE RESULTS OF ALL STATES ENGAGED IN THIRD PARTY TESTING OF BELL SOUTH'S OSS.

A. THE FLORIDA THIRD PARTY TEST OF BELL SOUTH'S OSS WILL PROVIDE THE MOST TIMELY AND COMPREHENSIVE INFORMATION ON BELL SOUTH'S OSS.

As this Commission is aware, nondiscriminatory access to BellSouth's OSS is essential to the development of competition, and thus is an essential requirement of Section 271. Independent third party testing has become the most utilized means to determine the adequacy of

OSS in other states is not relevant to any issue in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence."

and access to a regional bell operating company's ("RBOC") OSS. In the BellSouth region, the Florida Public Service Commission has ordered the most comprehensive third party test of BellSouth's OSS and this Commission should consider the results of that test before it conducts a review of BellSouth's application for 271 relief.

OSS are the computer systems that enable CLECs to gain **nondiscriminatory** access to BellSouth's network in order to obtain resale services and unbundled network elements ("UNEs"). OSS also include all related processes, information, and personnel resources needed for BellSouth to provide CLECs with nondiscriminatory access to its network. Specifically, in its *First Report and Order*, the Federal Communications Commission ("FCC") identified access to OSS as UNEs in and of themselves and stated that OSS consist of at least five functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing. Additionally, the FCC "consistently has found that nondiscriminatory access to these systems, databases, and personnel is integral to the ability of competing carriers to enter the local exchange market and compete with the incumbent LEC."³

Nondiscriminatory access to OSS functionality is one of the most basic requirements to successful development of competition. For example, ordering services for resale or Network Elements, such as a loop, require CLEC interaction with BellSouth's OSS. Similarly, the capability to discuss service and telephone number availability while a customer is on the line is delivered through interaction with BellSouth's OSS. Likewise, the ability to request customer maintenance or to monitor customer order progress is supported through BellSouth's OSS. Additionally, the ability to bill customers in a timely and accurate manner is heavily influenced by BellSouth's OSS. These few examples illustrate that absent nondiscriminatory access to OSS

³ Memorandum Opinion and Order, *In the Matter of Application of BellSouth Corp. et al, for Provision of In-Region InterLATA Services in Louisiana*, CC Docket No, 98-121 (October 13, 1998) ("Louisiana II Order"), ¶ 83.

functionality, there is little likelihood that CLEC performance at the retail service level will be at parity with BellSouth's performance for its retail customers.

In the past several years, as a result of the New York Public Service Commission's test of Bell Atlantic's OSS, third party testing of an RBOCs OSS has become the most prevalent method of testing the ability of OSS to provide nondiscriminatory access. In the SBC Texas decision, the FCC explained, "[w]e view independent third party testing as a useful tool in determining whether a BOC's deployment of OSS is nondiscriminatory."⁴ In the BellSouth region, only the Georgia and Florida Public Service Commissions have ordered third party testing of BellSouth's OSS.

The significance of nondiscriminatory access to BellSouth's OSS necessitates that the Commission review the findings in both the Georgia and Florida tests. Indeed, the North Carolina Utilities Commission recently refused to adopt BellSouth's proposed schedule because the Commission wanted to "allow for further information to be developed concerning pertinent Section 271 dockets in other states." *Order Setting Hearing and Procedural Schedule*, Docket Nos. P-55, Sub 1022, p. 6 (May 9, 2001). Exhibit A. Additionally, the Commission reasoned that a later hearing date would also allow it time to issue Orders in its pending dockets, such as the UNE Cost, collocation and performance measures dockets. Accordingly, the North Carolina Commission scheduled the hearing for October 29, 2001.

Additionally, BellSouth's lead witness on OSS, William Stacy, has also acknowledged the necessity of other Commissions to rely on **both** tests. In an OSS workshop held at the

⁴ Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-region InterLATA Services in Texas* ("SBC Texas Order"), ¶102.

Kentucky Public Service Commission on April 27, 2000, Mr. Stacy includes the following in his handout materials:

Does this PSC need to conduct an independent test of BellSouth's OSS?

- No, the **Georgia and Florida** tests will cover the entire spectrum of test criteria thoroughly
 - The timing of **the Florida test will include most if not all of the new UNEs** ordered by the FCC in the 319 remand.
 - The Florida PSC also concludes that "Thus, **if BellSouth's systems pass the third-party testing in Florida, then BellSouth shall be considered to have remedied the OSS concerns** that we identified in order PSC-97-1459-FOF-TL for purposes of our recommendation to the FCC on any future application by BellSouth the InterLATA authority in Florida." (F1 PSC-99-1568-PAA-TP, August 9, 1999)
- **These two tests will prove that BellSouth's OSS is operationally ready**, and that non-discriminatory access is being provided.

What do you recommend for the Kentucky Public Service Commission?

- Continue to **monitor the testing results in Georgia and Florida** to support Kentucky-BellSouth's 271 petition when it is re-filed
- Review the regional Service Quality Measurements and standards being developed as part of both the Georgia and Florida testing, and adopt those standards for Kentucky. (Emphasis Supplied)

(Stacy Handout, p. 18-19, Attached as Exhibit B)

Indeed, because the Florida third party test is significantly more robust and thorough and the scope significantly more comprehensive than Georgia, this Commission should rely on the Florida test for the most current and complete assessment of BellSouth's OSS systems. As the FCC recognized, "[t]he persuasiveness of a third party review, however, is dependent upon the qualifications, experience and independence of the third party and the conditions and scope of the review itself. (footnote omitted) If the review is limited in scope or depth or is not

independent and blind, we will give it minimal weight.” SBC Texas, ¶98. Thus, this Commission to the extent it does not perform its own testing⁵, should consider fully the results of the Florida third party test since it is more comprehensive in scope and likely will provide more current and comprehensive data upon which to base a Section 271 decision. Among the key differences between the Georgia and Florida third party tests are as follows:

- The Florida tests is reviewing interfaces currently used by CLECs –

The Georgia Third Party Test was initiated several months before OSS '99 was available (early 2000). Florida is testing OSS '99 and other upgrades while Georgia did not. OSS '99 is BellSouth's "state of the art" upgrade to its pre-ordering and ordering interface. It is the interface that BellSouth claimed in the late nineties that it would provide as a "solution to its OSS problems," and it is the interface that most closely complies with industry standards. A declining number of CLECs in South

⁵ The Tennessee Regulatory Authority is considering whether additional testing is required. On May 15, 2001, the TRA adopted the *First Report and Recommendation of Pre-Hearing Officer* in Docket No. 01-00362 (In re: Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations). (Exhibit C) The *Pre-Hearing Officer Report* notes that OSS are not limited to computer systems and software, but encompass "systems, databases, and personnel." The *Pre-Hearing Officer Report* determines that "some legacy systems serve only a subset of the region, and some serve only Tennessee. Some OSS processes that serve only Tennessee customers are different from those that serve Georgia and Florida customers." See also May 15, 2001, Directors Conference, Tr. at 31 ("some Legacy systems serve only a subset of the region and some serve only Tennessee. Some OSS processes that serve Tennessee customers are different from those that serve Georgia and Florida.") (Exhibit D)

Accordingly, the TRA decided to engage an independent third party consultant to determine what, if any, testing of BellSouth's OSS is needed and to conduct any such testing if ordered by the TRA. Specifically, the consultant will prepare a report consisting of:

- (1) identification of the systems or processes used by BellSouth's Tennessee operations for providing services and network elements to competitors;
- (2) an audit of BellSouth's Tennessee performance data; and
- (3) recommendations regarding performance and system testing necessary for the Authority to ascertain whether BellSouth is providing network services and elements to CLECs in Tennessee without impeding competition.

Pre-Hearing Officer Report at 5. In doing so, the consultant shall take into consideration the testing performed in other states, but will not simply adopt the results of those tests, and will verify the appropriateness, the independence, and the accuracy of the testing. *Id.*; Directors Conference, Tr. at 31-32. The approach adopted by the TRA allows BellSouth to build upon the work already performed in other states, including both Georgia and Florida, while ensuring the accuracy, completeness, and independence of the information the TRA must have to consult with the FCC on any *Tennessee* BellSouth Section 271 application.

Carolina are using the OSS that were tested in Georgia. Indeed, KPMG in Georgia continued testing the old version of EDI and TAG that predate OSS '99, even after OSS '99 was in place.

- The Florida test includes manual processes --

The Georgia test does not test manual processes while the Florida test does. BellSouth processes all of its retail orders electronically (i.e. without human contact) but does not provide this capability to the CLECs. At present, approximately 12% of all orders are submitted manually and 22% of accurate and complete CLEC orders submitted electronically to BellSouth end up being handled manually. Taken together, 34% of all CLEC orders receive manual handling in BellSouth Local Carrier Service Centers using processes that were not tested in Georgia. The Florida Commission has recognized this deficiency and therefore ordered KPMG to test Bellsouth's manual processing of orders as well.

- The Florida test includes review of the ability of CLECs to build interfaces --

In Georgia, KPMG and BellSouth built the interfaces which KPMG used to place test orders with BellSouth, and in some cases KPMG used existing BellSouth test interfaces. In Florida, the Commission required that KPMG build the interfaces--just like the CLECs build them--based only on interface documentation from BellSouth intended for the CLEC community. There was no BellSouth involvement in building interfaces in Florida because BellSouth does not help build interfaces for real world CLECs. Rather, the CLECs are left at the mercy of BellSouth's documentation to build their interfaces and this documentation is frequently incomplete or out of date.

Thus the Georgia test did not address the adequacy of BellSouth's documentation or support to CLEC interface implementation.

- The Florida test contract was with the Commission --

In Georgia, BellSouth is the contracting party and directs KPMG's testing efforts and the Commission is not party to the testing contract. In Florida, the Commission is the contracting party with KPMG and directs KPMG's testing efforts.

- The Florida test includes significant CLEC participation --

CLECs are allowed more and better participation in Florida, thus, they have had an impact on ensuring the test addresses their needs and issues.

- The Florida test includes an adequacy review of performance measures --

In Florida, KPMG is going well beyond what was required in Georgia for Performance Measures by reviewing and questioning the adequacy of BellSouth's measures.

- The Florida test has uncovered new problems and problems supposedly "fixed" in Georgia --

The Florida test has already uncovered numerous problems, which were not found in Georgia due to the limited scope of the Georgia test. In Florida, KPMG also has continued to find problems that BellSouth said it had fixed in the Georgia test. i.e. Change Management—this is the process by which BellSouth changes or modifies its OSS and how it notifies CLECs of these changes before BellSouth implements such changes or modifications.

The foregoing are only highlights of the many and significant differences between the Georgia and Florida tests. Additional significant differences (as well as more details regarding

the above described differences) are highlighted on Exhibit E, which is a more comprehensive analysis of the Georgia and Florida tests. Clearly, reliance solely on the limited Georgia test would not provide the Commission the information needed to make a thorough and complete decision with the confidence that it needs to protect the interests of South Carolina consumers.

Currently the Florida third party test is scheduled to conclude in August—provided BellSouth’s OSS are working as efficiently and on a nondiscriminatory basis as alleged and touted by BellSouth. Once the testing concludes, the Florida Commission Staff then will issue its recommendation regarding testing results in December, with a Florida Commission vote expected that same month. Thus, the benefits of waiting on the more comprehensive and robust Florida test far outweigh any undue pressure which BellSouth might impose upon this Commission to rush towards a 271 decision at this time. More fundamentally, this Commission should question BellSouth’s motive regarding timing of its proposed hearing and whether BellSouth fears -- or whether it is patiently awaiting -- results from the Florida test as they become available later this year.

B. GIVEN THE LEVEL OF COMPETITION IN SOUTH CAROLINA, THIRD PARTY TEST RESULTS WILL PROVIDE THE MOST THOROUGH EVIDENCE TO DETERMINE NONDISCRIMINATORY ACCESS TO OSS.

In seeking to again obtain this Commission’s premature approval of its 271 application, BellSouth erroneously asserts that this Commission should look to commercial activity in South Carolina rather than the results of a third party test. This statement is curious for two reasons. First, it asks the Commission to ignore the thorough and comprehensive testing underway in Florida. Second, even if BellSouth is correct in its claim that CLECs have 9.4% of the local exchange market in South Carolina, that fact alone does not relieve the Commission from its

need to conduct a thorough analysis of BellSouth's OSS and general checklist compliance to determine nondiscriminatory access.

As mentioned above, the FCC recognizes the importance of a third party test to ensure OSS readiness and adequacy. The fact that CLECs have a certain percentage of the market share does not necessarily mean that BellSouth's OSS are adequate or nondiscriminatory. For example, approximately one third of CLEC orders fall out for manual processing by BellSouth. BellSouth requires CLECs to manually submit certain orders because it does not have the capacity to electronically process those orders. The remaining orders that CLECs submit electronically actually result in some sort of manual intervention. Although all of the manually handled orders may eventually get processed, the handling of those orders is inadequate and discriminatory.

Additionally, AT&T questions BellSouth's contention that CLECs have 9.4% of the access lines in South Carolina. BellSouth provides no support for this number. It does not state whether the lines are facilities based, UNE or resale, nor does it breakdown how many of the lines are residential versus business. If most of the CLEC lines are facilities based, then that is not probative of whether BellSouth provides nondiscriminatory access to its network for UNE's or resale. If most of the lines are business, then that is not probative of whether BellSouth provides nondiscriminatory access to its OSS for residential services. In any event, absent actual testing of BellSouth's OSS for South Carolina, the results of the Florida Test should provide the most comprehensive review.

II. COMPREHENSIVE THIRD PARTY TESTING IS NECESSARY TO DETERMINE BELL SOUTH'S COMPLIANCE WITH OTHER CHECKLIST TERMS OF SECTION 271.

Without the results of comprehensive third party testing, the Commission cannot determine whether BellSouth complies with many of the checklist items of Section 271. BellSouth's OSS are the means by which CLECs are able to access and interconnect with BellSouth's network. As stated previously, nondiscriminatory access to BellSouth's OSS is essential to CLECs to enter the local exchange markets.

As the FCC recognized in the Bell Atlantic and Texas 271 Orders, nondiscriminatory access to OSS functions is part of the evaluation of all of the checklist items of Section 271, and in particular of the evaluation of nondiscriminatory access to unbundled network elements and resale (checklist items 2 and 14).⁶ In the Texas Order, the FCC explained:

The Commission must therefore examine a BOC's OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv). (footnote omitted). In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well. (footnote omitted). Consistent with prior orders, we examine SWBT's OSS performance directly under checklist items 2 and 14, as well as other checklist terms. (footnote omitted). (§ 93)

Accordingly, this Commission cannot adequately evaluate BellSouth's compliance with all of the checklist items of Section 271 until it is able to perform a comprehensive review of the performance of BellSouth's OSS. Such a review simply cannot be conducted until this Commission is able to consider the results of Florida's comprehensive third party testing of those OSS. For example, a key issue to be considered under checklist item 4, loops, is BellSouth's ability to provide loop hot cuts in a nondiscriminatory manner. The Florida test includes a review of both BellSouth's methods of procedures of this process as well as observations of hot cuts taking place. Similarly, a key issue under checklist item 1 is BellSouth's ability to provide

⁶ Texas Order, ¶93; Memorandum and Order, *Application of Bell Atlantic New York for Authorization Under Section 271 of the Telecommunications Act to Provide In-region InterLATA Service in the State of New York*, CC Docket No. 99-295 ("Bell Atlantic Order"), ¶84

collocation in a nondiscriminatory manner. The Florida test will evaluate BellSouth's policy and practice for collocation and design.

Proceeding with a 271 review without these results of these types of analysis will mean that the South Carolina Commission will not have key evidence of BellSouth's compliance with several checklist items. Significantly, BellSouth has not yet provided the Commission or CLEC's with the type of performance data required to establish checklist compliance. BellSouth's Notice of Intent indicates it intends to file April data in the future. The absence of such data at this time reinforces the simple fact that BellSouth's request for review of 271 Compliance is premature.

III. THIS COMMISSION STILL MUST ADDRESS CERTAIN ISSUES THAT ARE ESSENTIAL TO DETERMINING SECTION 271 COMPLIANCE.

To date, this Commission has not adequately resolved certain key areas, which are significant considerations in reviewing an RBOC's application for in-region interLATA authority pursuant to Section 271. This Commission has not considered adequately or fully addressed 1) the sufficiency of the performance measures BellSouth provides or whether BellSouth's data based on such measures shows nondiscriminatory treatment of CLECs, 2) whether BellSouth provides nondiscriminatory access to xDSL, 3) how BellSouth and CLECs must interconnect their networks, and 4) pricing of network elements.

A. ADEQUATE PERFORMANCE MEASURES AND COMPLIANCE DATA

An adequate performance measurements plan and adequate performance results are required for BellSouth to demonstrate that it is providing nondiscriminatory access to all of the items on the competitive checklist in § 271 of the Act. However, this Commission has not yet addressed: 1) the adequacy of BellSouth's performance measures and penalty plan, and 2) based

on adequate measures, whether BellSouth's data establishes nondiscriminatory access to the checklist items of Section 271, primarily access to BellSouth's OSS.⁷

In the Bell Atlantic and Texas Orders, the FCC afforded the findings of those state Commissions substantial weight because both of those state Commissions had developed a comprehensive performance measurement and remedy plan. Texas Order, ¶ 11, Bell Atlantic Order, ¶ 20. Accordingly, it is necessary for a performance measures review to precede a compliance review of the Section 271 checklist, since performance measures and data is a substantial part of the evidence establishing nondiscriminatory access to the checklist items. This is also the approach adopted both in Tennessee and North Carolina. In Tennessee, the TRA has established two dockets, one to address performance measures and the other to address third party testing, and it has said that the performance measures docket will precede the third party testing docket. *Order Consolidating Docket Nos. 99-00347 and 00-00392 Into Docket No. 01-00193 and Opening Docket No. 01-00362*, Docket Nos. 01-00193, 01-00362, 99-00347, 00-00392 (May 15, 2001). Similarly, the North Carolina Utilities Commission determined that it would conclude its currently pending performance measures docket before holding any hearing on BellSouth's Section 271 compliance. *Order Setting Hearing and Procedural Schedule*, Docket Nos. P-55, Sub 1022 (May 9, 2001).

Currently, BellSouth does not have adequate performance measures in place nor has it provided the necessary data and comparisons for this Commission to determine whether BellSouth is providing nondiscriminatory access to its network. In order to demonstrate compliance with Sections 251 and 271 of the Act, BellSouth must establish that it offers non-discriminatory access and interconnection to its network and that it provides nondiscriminatory

⁷ Although the Commission had an informal workshop on June 19, 2000 regarding performance measures and penalties, the Commission has not further considered these matters.

support for total services resale, use of UNEs, and access OSS. Early in the process of implementing the Act, the FCC emphasized that ILECs' nondiscriminatory support for CLECs is critical to the ultimate development of local competition. See First Report and Order, *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. Aug. 8, 1996) ("*Local Competition First Report and Order*") ¶ 315. The performance measurements detailed in BellSouth's SQM are not sufficient to measure whether BellSouth provides nondiscriminatory support.

Further, the FCC has clearly established that promises of future performance have no probative value in demonstrating present compliance. Texas Order, ¶ 38. In the Texas Order, the FCC states, "In order to gain in-region interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with the statutory conditions for entry, instead of prospective evidence that is contingent on future behavior." ¶ 38. Unless or until BellSouth meets its burden, which cannot be met through promises of future performance, the Commission cannot find that BellSouth meets the requirements of the Section 271 checklist.

Most fundamentally, BellSouth must demonstrate nondiscriminatory access and support through empirical evidence of sufficient quality and quantity.⁸ It is not the CLECs' burden to establish a lack of parity. *Id.* at 158. This principle was reaffirmed in the FCC's October 13, 1998 decision reflecting BellSouth's second Section 271 application for Louisiana. BellSouth must produce actual measurement results demonstrating that it provides the same access and interconnection to its competitors that BellSouth provides to itself. As discussed previously, BellSouth has not included such data in its May 16, 2001, filing and has indicated that it intends to supplement the record with data at some future time.

Thus, adequate performance measures and data provide the basis of a comprehensive review of BellSouth's compliance with the Section 271 checklist. This Commission should first establish adequate measures and BellSouth should provide sufficient data before the Commission undertakes a full consideration of Section 271 compliance.

B. NONDISCRIMINATORY ACCESS TO DSL

Nondiscriminatory access to xDSL loops, including line sharing and line splitting is a significant consideration in Section 271 applications. In the Texas and Bell Atlantic Orders, the FCC noted that separate and comprehensive evidence regarding DSL capable loops, including performance data, is necessary for a Section 271 review.⁹ Texas Order, ¶282, Bell Atlantic Order, ¶330. In referencing its Bell Atlantic Order, the FCC in its Texas Order explains:

the evidence an applicant may use to demonstrate that it provides xDSL-capable loops to competing carriers in a nondiscriminatory manner. First, the Commission stated that 271 applicants could demonstrate that they are providing nondiscriminatory access to xDSL-capable loops through comprehensive and accurate reports of performance measures.¹⁰ As we noted in our Bell Atlantic New York Order:

we emphasize our strong preference for a record that contains data measuring BOC's performance pursuant to state-adopted standards that were developed with input from the relevant carriers and that include clearly-defined guidelines and methodology...Accordingly, we encourage state commissions to adopt specific xDSL loop performance standards measuring, for instance, the average completion interval, the percent of installation due dates missed as a result of the BOC's provisioning error, the timeliness of order processing, the installation quality of xDSL loops provisioned, and the timeliness and quality of the BOC's xDSL maintenance and repair functions."

Texas Order, ¶282

⁸ Memorandum and Opinion, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-298 (Aug. 19, 1997) ("Ameritech Order") ¶¶ 161, 211.

⁹ The SBC Texas application was the first time the FCC actually considered evidence regarding DSL capable loops, and the FCC commended the Texas for "its extensive consideration of xDSL capable loop issues and development of specific xDSL-capable loop performance standards before SWBT filed its application." Texas Order, ¶283.

To date, the South Carolina Public Service Commission has not established xDSL specific performance measures nor has BellSouth provided performance data. BellSouth has not only failed to provide South Carolina data, but it has not provided any xDSL data as part of its SQM Reports in any part of its region.¹¹

Not only is BellSouth required to provide nondiscriminatory access to ordering and provisioning of xDSL loops, but BellSouth also is required to comply with the FCC's Orders on line sharing and line splitting.¹² As the FCC explained in the line-splitting Order:

incumbent LECs are required to make all necessary network modifications to facilitate line-splitting, including providing nondiscriminating access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.

Line-splitting Order ¶20

This Commission has not yet addressed the CLECs' ability to obtain nondiscriminatory access to BellSouth's xDSL capable loops. To date, BellSouth has not demonstrated compliance with the FCC's requirements regarding line sharing and line splitting.

The Georgia Public Service Commission recently found that BellSouth needs to improve its access to xDSL loops, line sharing and line splitting. In an xDSL generic Docket, the Georgia Commission heard evidence on whether BellSouth is in compliance with existing xDSL requirements. Docket 11900-U. The Georgia Commission ordered BellSouth to make several changes to improve the xDSL access it provides to data LECs. (See Public Staff

¹⁰ Bell Atlantic New York Order, 15 FCC Rcd at 4123-24, ¶333-35.

¹¹ On March 26, 2001, BellSouth posted some CLEC data for January for Georgia only, but not as part of its monthly SQM reports.

¹² Texas Order, ¶321-326; Memorandum and Order, FCC 01-29, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-region, interLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217 (January 22, 2001) ("Kansas and Oklahoma Order"), ¶220; *Third Report and Order on Reconsideration in CC Docket No. 98-147, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dockets 98-147, 96-98, released January 19, 2001 ("line splitting Order") ¶18-26.

Recommendation adopted by the Commission on April 3, 2001, Attached as Exhibit F). The Georgia Commission also ordered BellSouth to file an OSS implementation schedule within two months of the Commission's Order and actually implement OSS changes within six months of the Order for ordering and provisioning of xDSL loops, line sharing and line splitting.

To bring a DSL competitive market to South Carolina consumers, this Commission must address whether BellSouth complies with the FCC Orders regarding access to xDSL loops, line sharing and line splitting. A review of these xDSL related issues is also an essential and integral part of a comprehensive review of the checklist items of Section 271.

C. NETWORK INTERCONNECTION

As this Commission is aware, the issue of how BellSouth requires CLECs to interconnect with its network also is an important issue in the context of a Section 271 review. Contrary to existing law, this Commission has found that CLECs should be financially responsible for transporting BellSouth's originating traffic from its local calling area to the physical point of interconnection.¹³ In its Kansas and Oklahoma Order, the FCC addressed the issue of the incumbent effectively denying "a competing carrier the right to select a single point of interconnection by improperly shifting to competing carriers inflated transport and switching costs associated with such a [single point of interconnection] arrangement." Kansas and Oklahoma Order at ¶ 233. The FCC was addressing the very same issue raised by AT&T in Oklahoma that AT&T raised in its arbitration in South Carolina.

The FCC clearly understood the issue as the very same issue presented by AT&T in its arbitration: "SWBT's interpretation of the state-approved interconnection agreement raises

¹³ See Commission's Order dated January 30, 2001, *In Re: Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. 200-527-C.

potential future compliance issues regarding the interplay between a single point of interconnection and reciprocal compensation.” *Id.*

Although the issue was one of future compliance, the FCC nonetheless cautioned SWBT “from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC’s point of interconnection.” *Id.* ¶ 235. In particular, the FCC confirmed that its decision allowing a CLEC to designate a single point of interconnection did not in any way “change an incumbent LEC’s reciprocal compensation obligations under our current rules.” *Id.* The FCC specifically referenced 47 C.F.R. §§ 51.703(b) and 51.709(b), which “preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC’s network.” *Id.* Thus, this Commission needs to first ensure that its findings on this issue are consistent with existing law before the Commission can fully consider the checklist item of interconnection in a Section 271 review.

D. PRICING OF NETWORK ELEMENTS

Finally, pricing of network elements also is an important issue in a 271 compliance review to determine access to network elements. Checklist item 2 of Section 271 requires an RBOC to provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1).” Section 252(d)(1) requires that “a state commission’s determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit. (footnote omitted) Pursuant to this statutory mandate, the Commission has determined that prices for unbundled network elements (UNEs) must be based on the total element long run incremental cost (TELRIC) of providing those elements. (footnote omitted)” *Kansas and Oklahoma Order*, ¶ 47.

Although this Commission currently has a proceeding underway on rates for unbundled network elements, the hearing is scheduled to begin on June 18, 2001, and thus no Order has yet been issued. Without TELRIC based rates for network elements, the Commission cannot conduct an adequate Section 271 review.

IV. BELLSOUTH'S ATTEMPTS TO USE GEORGIA TO SUPPORT A DEFICIENT APPLICATION IN SOUTH CAROLINA ARE MISPLACED.

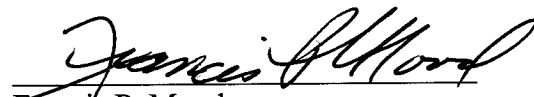
The FCC has made clear that any 271 review must start first with the RBOC's performance in the state for which 271 approval is sought. To the extent the FCC has approved the RBOC's 271 application in another state, the FCC's decision may be "informed" by performance in the "approved" state. *See SBC KS and OK Order* ¶¶ 35, 36. Although BellSouth apparently will rely on Georgia measurements and data in South Carolina, neither the Georgia Public Service Commission, nor the FCC has approved any BellSouth 271 application. Indeed, no date has been established for the Georgia Public Service Commission to vote on BellSouth's request, and the Georgia third party test is not complete at this time. Key exceptions involving the integrity of the performance data provided by BellSouth remain open. Further, the Georgia Commission's request of KPMG to review BellSouth's Compliance with its January 2001 Performance Measurements Order is not complete. KPMG admitted in Georgia that these activities will not be completed until sometime in third quarter, 2001. Any attempt to rely on Georgia performance measures and data is both inappropriate and premature.

IV. CONCLUSION

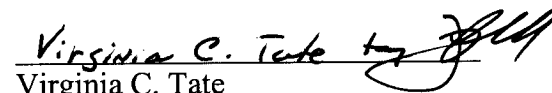
For the foregoing reasons, AT&T urges this Commission to deny BellSouth's request for a July 23, 2001 Hearing. This Commission should first review the final results of the Florida third party test before it conducts a full-scale review of the checklist items of Section 271. The Florida test should provide this Commission with a thorough and complete review of BellSouth's

current OSS. Additionally, nondiscriminatory access to OSS is an integral part of most of the Section 271 checklist items. Further, there are certain key areas that the Commission must fully and sufficiently address before it can conduct a Section 271 review, such as whether BellSouth 1) has adequate performance measures and data, 2) provides nondiscriminatory access to xDSL loops, 3) allows CLECs to interconnect with its network in a nondiscriminatory manner, 4) provides physical collocation in compliance with the FCC orders, and 5) has complied with the pricing requirements of TELRIC. Only after these critical issues are decided can this Commission establish a procedural schedule for 271 in South Carolina. The current hearing date proposed by BellSouth is premature on all fronts and on all counts—and accordingly should be rejected by this Commission.

Respectfully submitted,



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